7555-01-P

NATIONAL SCIENCE FOUNDATION

Limited Exemption of the American Recovery and Reinvestment Act with Respect to the Purchase of a Variable Refrigerant Flow System

AGENCY: National Science Foundation.

ACTION: Notice.

SUMMARY: NSF is hereby granting a limited exemption of section 1605 of the American Recovery and Reinvestment Act of 2009 (Recovery Act), Pub. L. No. 111-5, 123 Stat. 115, 303 (2009), with respect to the purchase of a variable refrigerant flow system that will be used in the renovation of the St. Anthony Falls Laboratory at the University of Minnesota. This system is required in order to provide the requisite heating and cooling capability in a manner that is consistent with the *U.S. Secretary of the Interior's Standards for Archaeology and Historic Preservation*, taking into account the *U.S. Secretary of the Interior's Standards for the Rehabilitation of Historic Properties*.

DATE: March 18, 2013

ADDRESS: National Science Foundation, 4201 Wilson Blvd., Arlington, Virginia 22230.

FOR FURTHER INFORMATION CONTACT: Mr. Jason Madigan,

Division of Grants and Agreements, 703-292-4333.

SUPPLEMENTARY INFORMATION: In accordance with section 1605(c) of the Recovery Act and section 176.80 of Title 2 of the Code of Federal Regulations, the National Science Foundation (NSF) hereby provides notice that on March 15, 2013 the NSF Chief Financial Officer, in accordance with a delegation order from the Director of the agency, granted a limited project exemption of section 1605 of the Recovery Act (Buy American provision) with respect to the variable refrigerant flow (VRF) system that will be used in the renovation of the St. Anthony Falls Laboratory (SAFL). The basis for this exemption is section 1605(b)(2) of the Recovery Act, in that variable refrigerant flow systems of satisfactory quality that meet the specifications required for the renovation of this historic property are not produced by vendors in the United States in sufficient and reasonably available commercial quantities. The total cost of the VRF, estimated as $181,000, represents approximately 2.6 percent of the total $7.1 million Recovery Act award provided for renovation of the SAFL.

I. BACKGROUND

The Recovery Act appropriated $200 million to NSF for projects to be funded by the Foundation's Academic Research

Infrastructure (ARI) program. The renovation of SAFL is one of NSF's ARI projects. Section 1605(a) of the Recovery Act, the Buy American provision, states that none of the funds appropriated by the Act "may be used for a project for the construction, alteration, maintenance, or repair of a public building or public work unless all of the iron, steel, and manufactured goods used in the project are produced in the United States."

The St. Anthony Falls Laboratory was built in 1938 with Works Progress Administration funding. It is part of the St. Anthony Falls Historic District, added to the National Register of Historic Places in 1971, and this project is, therefore, being undertaken pursuant to a Programmatic Agreement developed as part of NSF's compliance with Section 106 of the National Historic Preservation Act to preserve the historical integrity of the laboratory building.

The SAFL renovation is being funded under a standard grant awarded to the University of Minnesota (UMN) that began in 2010. The project is currently in the construction phase.

Subsections 1605(b) and (c) of the Recovery Act authorize the head of a Federal department or agency to

waive the Buy American provision if the head of the agency finds that: (1) applying the provision would be inconsistent with the public interest; (2) the relevant goods are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality; or (3) the inclusion of the goods produced in the United States will increase the cost of the project by more than 25 percent. If the head of the Federal department or agency waives the Buy American provision, then the head of the department or agency is required to publish a detailed justification in the Federal Register. Finally, section 1605(d) of the Recovery Act states that the Buy American provision must be applied in a manner consistent with the United States' obligations under international agreements.

II. FINDING THAT RELEVANT GOODS ARE NOT PRODUCED IN THE UNITED STATES IN SUFFICIENT AND REASONABLY AVAILABLE QUALITY

The project involves renovations and upgrades to the University of Minnesota’s St. Anthony Falls Laboratory (SAFL) facility, a contributing element to the National Register-listed St. Anthony Falls Historic District in Minneapolis, MN. When the project was initially being considered for funding, the design of the proposed

improvements was not sufficiently advanced to allow for a full evaluation of their potential impacts on the SAFL facility and the Historic District. Therefore, a Programmatic Agreement (PA) was executed among NSF, the University of Minnesota, the Minnesota State Historic Preservation Office, and the National Park Service to define a process through which the PA signatories and other consulting parties would review the design of the proposed upgrades and renovations, as it was being developed, and, through this review, ensure that the proposed action results in no significant adverse impact to the historic integrity of the SAFL facility and the St. Anthony Falls Historic District. The Agreement states that, "Insofar as possible, the proposed Project shall be implemented in a manner consistent with the *U.S. Secretary of the Interior's Standards for Archaeology and Historic Preservation*, taking into account the *U.S. Secretary of the Interior's Standards for the Rehabilitation of Historic Properties* ('SOI Rehabilitation Standards')."

Installation of a modern heating, ventilation and air conditioning (HVAC) system is required for the safety and welfare of personnel working in SAFL and for the use of some of the instrumentation within the renovated laboratory. The University of Minnesota and its design

consultant engaged an engineering consultant to determine the capabilities of the HVAC system required and how best to accommodate these in a way that best preserves the historical integrity of the laboratory building. The use of a VRF system, rather than a type of HVAC system commonly manufactured in the U.S., has been determined by the Awardee, the University of Minnesota, to be necessary in order to meet the requirements of the Programmatic Agreement. This conclusion is based on design considerations associated with historical preservation, space limitations, energy efficiency, and performance. The University of Minnesota has stated that "The VRF system [is] necessary to accommodate the extraordinary space limitations of the project, the need to maintain the look and feel of a 1938 WPA [Works Progress Administration] facility, and the need to maximize usable research space."

The University of Minnesota's architect for this project, Perkins+Will, conducted market research by discussing options with an engineering consultant, and with local vendors of HVAC systems, by Internet search, and by reviewing a prior determination of inapplicability issued by the Department of Energy. The Department of Energy, in a Memorandum of Decision issued by the Assistant Secretary for Energy Efficiency and Renewable Energy on May 24, 2010,

that considered the applicability of Section 1605 of the Recovery Act to projects funded by the Office of Energy Efficiency and Renewable Energy, had found that "Variable Refrigerant Flow Zoning HVAC Systems," including "variable refrigerant flow (VRF) multi-split heat pump (with or without heat recovery) and air conditioning systems," are "not produced or manufactured in the United States in sufficient and reasonably available quantities and of a satisfactory quality," and had accordingly made a determination of inapplicability of Section 1605 in the context of such systems. (See also Federal Register Volume 75, Number 119 (Tuesday, June 22, 2010), 35447-35449.)

Perkins+Will concluded that no VRF systems of the required scale were manufactured in the U.S.

In the absence of a domestic supplier that could provide a VRF system that meets or exceeds the design requirements of the SAFL renovation, the University of Minnesota requested that NSF issue a Section 1605 exemption determination with respect to the purchase of a foreign-supplied VRF that will meet the specific design and technical requirements that are necessary for the renovation of SAFL.

NSF's Division of Grants and Agreements (DGA) and other NSF program staff reviewed the University of Minnesota exemption request submittal and determined that sufficient technical information was provided in order for NSF to evaluate the exemption request and to conclude that an exemption is needed and should be granted.

III. EXEMPTION

On March 15, 2013, based on the finding that no domestically produced variable refrigerant flow system meets all of the technical specifications and requirements of the St. Anthony Fall Laboratory renovation project and pursuant to section 1605(b), the NSF Chief Financial Officer, in accordance with a delegation order from the Director of the agency signed on May 27, 2010, granted a limited project exemption of the Recovery Act's Buy American requirements with respect to the procurement of the variable refrigerant flow system.

Dated: March 18, 2013

Lawrence Rudolph,

General Counsel,

National Science Foundation

Submitted for the National Science Foundation on March 18, 2013,

Suzanne H. Plimpton,

Reports Clearance Officer,

National Science Foundation.

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